

BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:)
) Docket No. 07-AFC-3
Application for Certification)
of the CPV Sentinel Energy Project)
By the CPV Sentinel, LLC)

Prehearing Conference on the Limited Issue of Air Quality

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JUNE 1, 2010
10:00 A.M.

Reported by:
Peter Petty

HEARING OFFICER

Kenneth Celli

Siting Committee Members and Their Advisors Present

James D. Boyd, Vice Chair and Presiding Member
Tim Olson, his Advisor

STAFF PRESENT

Richard Ratliff, Staff Counsel
Caryn Holmes, Staff Counsel
John Kessler, Project Manager
Jennifer Jennings, Public Advisor

Applicant

Michael J. Carroll, Esq., Latham & Watkins

Mark O. Turner, VP, Competitive Power Ventures

William Mitchell, CPV Sentinel, LLC

Roy Beldin, General Electric

Intervenors

Angela Johnson Mezaros, California Communities
Against Toxics (CCAT)

Shana Lazerow, California for a Better Environment (CBE)

Also Present

Government Agencies (Via Telephone)

Mohsen Nazemi, SCAQMD
Kurt Wiese, SCAQMD

Public

Joe Griffiths, Capital Power Corporation
Mavis Scanlon, California Energy Markets
Greg Hyatt, Inside Washington Publishers

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P R O C E E D I N G S

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JUNE 1, 2010

10:05 A.M.

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VICE CHAIR BOYD: Welcome back, everybody. Good morning. Thanks for being here. This is, although noticed as an Evidentiary Hearing, I think it is just a continuation of our pre-hearing conference, if I am not mistaken, despite what the hearing notice says. I welcome you all and, in the interest of losing my wit and saying too much, and giving optimum time to Mr. Johnson, who has only another 25 minutes, roughly, I will just quickly ask the folks to introduce themselves. I am Jim Boyd, Commissioner, Vice Chair of the Commission, and the principal and only member of this particular siting committee, and you all know Mr. Celli, our Hearing Officer. I am now being joined by my Advisor, Tim Olson, here at the dais. So I think we would immediately like to turn it over to other folks to introduce themselves, starting with the Applicant.

MR. CARROLL: Good morning. Mike Carroll with Latham & Watkins on behalf of the Applicant, and here with me this morning is Mark Turner and Will Mitchell with CPV Sentinel, LLC.

VICE CHAIR BOYD: Thank you. Staff?

MR. RATLIFF: Rick Ratliff and momentarily Caryn Holmes, counsel for staff, along with John Kessler, the Project Manager.

1 VICE CHAIR BOYD: Okay, do we have anyone on the
2 phone from the County of Riverside? The Cities of Palm
3 Springs or Desert Hot Springs? I know South Coast AQMD is
4 out there. Mohsen, do you want to just introduce yourself?

5 MR. NAZEMI: Hi, Mohsen Nazemi, South Coast Air
6 Quality Management District.

7 VICE CHAIR BOYD: Thanks, Mohsen. Mission Springs
8 Water District? Desert Water Agency? Other stated
9 California Government representatives? How about local
10 government representatives? All right, then finally, and
11 perhaps most important, the Intervenor, would you please
12 introduce yourselves for the record?

13 MS. LAZEROW: Good morning, this is Shana Lazerow on
14 behalf of Communities for a Better Environment, Intervenor.

15 VICE CHAIR BOYD: Good morning, thank you.

16 MS. JOHNSON MEZAROS: Good morning, Commissioner
17 Boyd, this is Angela Johnson Mezaros, representing
18 California Communities Against Toxics.

19 VICE CHAIR BOYD: Thank you. And I am speaking
20 rapidly to try to give you some content here. Okay, I am
21 going to turn this over to Hearing Officer Celli now.

22 HEARING OFFICER CELLI: Thank you, Commissioner.
23 Good morning, everybody. The Committee scheduled this Pre-
24 Hearing Conference in a Notice filed on May 28th, 2010. As
25 explained in the Notice, the basic purposes of the Pre-

1 Hearing Conference are to assess the parties' readiness for
2 hearings, to clarify areas of agreement or dispute, to
3 identify witnesses and exhibits, and to determine upon which
4 areas parties desire to cross examine witnesses, and to
5 discuss associated procedural matters. To achieve these
6 purposes, we required in the Notice that any party desiring
7 to examine witnesses at future Evidentiary Hearings file an
8 identification of the issues and the identity of the
9 witnesses by 9:00 on June 1st. The actual testimony from the
10 Intervenors CCAT and CBE will be delivered to the parties
11 and the Hearing Advisor by 3:00 p.m. on June 15th. Rebuttal
12 testimony will be due at 3:00 p.m. on June 30th from all the
13 parties, and the Evidentiary Hearing will be at 10:00 a.m.
14 on July 19th, Hearing Room A, at the California Energy
15 Commission. Timely Pre-Hearing Conference Statements were
16 filed by Applicant and the staff. A Pre-Hearing Conference
17 Summary was filed by CBE this morning, and we just received
18 CCAT's Pre-Hearing Conference Statement, which, rather than
19 take a half an hour to figure out how to put it up on a
20 projector, I am just going to read it into the record:
21 "California Communities Against Toxics, hereinafter CCAT,
22 hereby submits the following Supplemental Pre-Hearing
23 Conference Statement as ordered by the Committee in which
24 CCAT provides the identity of witnesses sponsored. The
25 identity of the witness is Michael Harris, Assistant

1 Professor of Law and Director of the Environmental Law
2 Clinic at the University of Denver, Sturm College of the
3 Law." S-t-u-r-m. "Topic area will be air quality. A brief
4 summary of the testimony to be offered is Mr. Harris will
5 opine on the legal standards that apply to offsets, whether
6 or not, based on the documentation provided, the proposed
7 offsets meet the applicable legal standards." She provides
8 qualifications of the witness, he is a Professor of Law and
9 Director of the Environmental Law Clinic at University of
10 Denver, Sturm College of the Law, and then she gives the
11 recitation, which I am sure the parties are likely to
12 stipulate that he is an expert in this limited field we are
13 talking about, when we get to that, and we will have plenty
14 of time to discuss that at the Evidentiary Hearing.
15 "According to the time for direct, Mr. Harris will present
16 written testimony prior to the hearing, should oral
17 testimony be desired by the Commission, direct should take
18 no longer than 30 minutes." And that is submitted by Angela
19 Johnson Mezaros, counsel for California Communities Against
20 Toxics.

21 We also received this morning the Pre-Hearing
22 Conference Statements from CBE, which states that there were
23 no changes in the prior Pre-Hearing Conference Statement.
24 "The question of whether the creation and the transfer of
25 the emission reduction credits offered by the South Coast

1 Air Quality Management District satisfy all legal
2 requirements must be resolved separately from the
3 certification process for the CTV Sentinel Plant." That is
4 the only issue mentioned. And then the identity of the
5 witness is Julia E. May, M-a-y. The topic area is
6 Emissions. "Ms. May's testimony is offered to assist in the
7 Commission's separate evaluation of the creditability of
8 Emission Reduction Credits. Ms. May will evaluate materials
9 received by CBE on May 13th, 2010, that AQMD offered on the
10 basis of the District's credit calculations. Specifically,
11 Ms. May will summarize and evaluate the types and sources of
12 the data provided by the District. She will evaluate
13 whether these materials can be used to determine actual
14 reductions in emissions on which offsets can be based."
15 Then, her qualifications, "she has 20 years experience
16 reviewing and permitting monitoring information for existing
17 and proposed sources of air emissions." I did not print it
18 out, but there was an attached curriculum vitae and I did
19 not print that off. Her time for direct would be 30
20 minutes.

21 So, so far what we have is an estimate of 30 minutes
22 from both Intervenors, 30 minutes per witness, I imagine,
23 what 10-15 minutes of cross, is that reasonable, Applicant?

24 MR. CARROLL: I think that is reasonable as a
25 placeholder. Without having seen the testimony and just

1 learning the identity of the witnesses today, and not really
2 having an opportunity to evaluate their qualifications, it
3 is difficult to say for sure, but I think that is probably
4 as good an estimate as any for a placeholder.

5 HEARING OFFICER CELLI: Well, as long as we have
6 you, Mr. Carroll, you are calling three separate witnesses,
7 isn't that correct?

8 MR. CARROLL: We are actually not intending to call
9 any witnesses for live testimony. We have submitted
10 Declarations from all of our witnesses and our intention was
11 to submit on the Declarations.

12 HEARING OFFICER CELLI: Okay, but you will have them
13 here for cross if needed?

14 MR. CARROLL: Well, I guess we would like to
15 understand whether people intend to cross examine them. I
16 would not necessarily fly them all up here without
17 indication that there was a desire to cross examine them.

18 HEARING OFFICER CELLI: Okay, we will find out about
19 that. Let me ask staff, how many witnesses does staff have
20 for this hearing?

21 MR. RATLIFF: One.

22 HEARING OFFICER CELLI: And is your mic on?

23 MR. RATLIFF: One.

24 HEARING OFFICER CELLI: Thank you. And is that Mr.
25 Layton is going to be --?

1 MR. RATLIFF: No, Mr. Radis.

2 MS. HOLMES: Mr. Radis.

3 HEARING OFFICER CELLI: Steve Radis, okay. And his
4 testimony will be submitted by documentation, by written
5 testimony, as well? Is that correct?

6 MS. HOLMES: It has been.

7 HEARING OFFICER CELLI: Okay, so we have received
8 all of the testimony from the Applicant and from staff. I
9 am going to ask CBE whether you intend or need to cross
10 examine any of the Applicant's or staff's witnesses. Ms.
11 Lazerow?

12 MS. LAZEROW: Oh, sorry, I had -

13 HEARING OFFICER CELLI: The question is - we are
14 trying to determine whether the parties are willing to
15 stipulate to written testimony and, if you do not need to
16 cross examine the witnesses themselves, we could excuse
17 their presence.

18 MS. LAZEROW: I am sorry to say I cannot actually
19 give you my final answer on that until my expert, because
20 expert has finished with their analyses, so I realize it
21 would be more convenient if they actually make that decision
22 today, but I do not think I am prepared to give up the
23 opportunity to cross examine at this time.

24 HEARING OFFICER CELLI: And would that also be your
25 position, Ms. Mezaros?

1 MS. JOHNSON MEZAROS: Yes, it would.

2 HEARING OFFICER CELLI: Okay, in light of that, I am
3 going to ask that both of the Intervenors please declare
4 which witnesses you want to cross examine when you submit
5 your testimony and I am going to ask you to please state how
6 much time you anticipate needing to cross those witnesses
7 that you believe you need to cross examine. Is that
8 acceptable, Ms. Lazerow?

9 MS. LAZEROW: Yes.

10 HEARING OFFICER CELLI: And Ms. Mezaros?

11 MS. JOHNSON MEZAROS: Yes.

12 HEARING OFFICER CELLI: Okay, so on the 15th of this
13 month, we are going to receive testimony from the
14 Intervenors and in that testimony, if you can have a cover
15 letter that explains to us your needs vis a vis cross
16 examination, we would appreciate that.

17 MS. JOHNSON MEZAROS: Absolutely. Thank you.

18 HEARING OFFICER CELLI: And what I would also offer
19 to the Intervenors is the possibility of your testimony
20 coming in as written declaration, rather than having your
21 witnesses coming in. Let me ask Ms. Lazerow, is that the
22 way you want to proceed?

23 MS. LAZEROW: I am completely fine with submitting
24 my direct testimony in writing, and if no one feels the need
25 to cross examine my witness, I do not see any reason to

1 bring her in person.

2 HEARING OFFICER CELLI: And Ms. Mezaros, what is
3 your position?

4 MS. JOHNSON MEZAROS: Yes, that would be my
5 position. Mr. Harris will be submitting written testimony
6 and will be giving rebuttal if there are still issues that
7 people would like to have him there for cross examination,
8 then we will make him available. Otherwise, we would be
9 happy to go based on our written testimony.

10 HEARING OFFICER CELLI: Now, according to the
11 current - what is going to happen is, on the 15th, we are
12 receiving CCAT's and CBE's direct testimony. Rebuttal
13 testimony is going to be due on June 30th, which is - well,
14 we are going to July 19th, so I am going to require the
15 Applicant and staff to declare whether they need to cross
16 examine their witnesses in their documents that are
17 submitted on June 30th, if you would, please. This way,
18 everybody will know how many witnesses we need. I am also
19 going to ask if you can estimate how much time you need to
20 cross examine.

21 I just want to make one - I know I do not need to do
22 this, but I am going to say it anyway, just because I have
23 seen some hearings lately where I have had some counsel sort
24 of floundering around at the hearing, and it seems to me
25 that, given the huge amount of advanced notice that all the

1 parties have on all of the testimony, that when the parties
2 come in, you should be able, when you are doing your cross
3 examination, if you are going to refer to any testimony, you
4 should have that right there, you should be able to say,
5 "Mr. Witness, is it true that you stated at page 3,
6 paragraph 2, line 1 of your testimony," whatever he said.
7 But you need to have that right at the ready and I do not
8 want to spend a lot of time with counsel saying, "One
9 moment, please" as you look up and try to find testimony for
10 cross examination. So we are going to ask that you be crisp
11 with your cross examinations. Again, I am sure I do not
12 need to say that, but I have run into some of that lately,
13 and I think the official definition of "one moment" is about
14 10 seconds. So we will go with that.

15 So thank you, parties, for your submissions this
16 morning. Applicant, anything about the submission that you
17 received from either Intervenor?

18 MR. CARROLL: No, other than obviously we just
19 received them, we have not had an opportunity to evaluate
20 the qualifications, other than what is on the printed page
21 of the witnesses. But, of course, we will be doing that and
22 responding appropriately after having had an opportunity to
23 look at it.

24 HEARING OFFICER CELLI: And staff. Anything on the
25 submissions you received this morning?

1 MR. RATLIFF: No.

2 HEARING OFFICER CELLI: Okay, it sounds to me, then,
3 that we have a pretty quick and efficient Evidentiary
4 Hearing coming up wherein we have an expectation of about
5 one hour of direct testimony live, if we have to go that
6 route, from the Intervenors, and probably, you know, another
7 half hour or 45 minutes of cross examination. And it sounds
8 like we could probably get this Evidentiary Hearing done in
9 less than three hours, certainly. Do I have this right,
10 Applicant?

11 MR. CARROLL: I would certainly think so.

12 HEARING OFFICER CELLI: Staff?

13 MS. HOLMES: We hope so.

14 MR. RATLIFF: Well, it is a little bit difficult to
15 forecast these things when you do not have either the
16 testimony or an express identification of the issues that
17 may be there, so I am reluctant to forecast, but we did not
18 expect a long hearing.

19 HEARING OFFICER CELLI: Well, that is certainly our
20 expectation. And Ms. Lazerow, anything that you think is
21 going to drag this thing out more than, say, two and a half
22 hours, as an Evidentiary Hearing?

23 MS. LAZEROW: I would hope not. But I think I would
24 also - I would have to agree that we will have to see where
25 everyone, you know, where everything falls when the

1 rebuttals to our written testimony are received, if
2 everyone, you know, feels fine with the evidence that has
3 been submitted in writing, I cannot imagine it going longer
4 than that.

5 HEARING OFFICER CELLI: Okay, and it is important
6 for us to have a handle on how much time we are using the
7 room, and so forth, and setting up the WebEx. Ms. Mezaros,
8 any comment?

9 MS. JOHNSON MEZAROS: No, I certainly would hope and
10 anticipate that we will all be long gone within a three hour
11 timeframe.

12 HEARING OFFICER CELLI: Excellent. At this time, I
13 think that we have covered all of the things that we need to
14 cover.

15 MS. HOLMES: Mr. Carroll?

16 HEARING OFFICER CELLI: Mr. Carroll.

17 MR. CARROLL: I just wanted to seek clarification
18 regarding the South Coast AQMD's witness.

19 MS. HOLMES: Same question.

20 HEARING OFFICER CELLI: They are online. I was just
21 about to - if there was not anything further, I was going to
22 go to public comment.

23 MR. CARROLL: Sure.

24 HEARING OFFICER CELLI: So other than that, do we
25 have anything necessary to discuss today from the

1 Applicant's point of view?

2 MR. CARROLL: Well, I just thought we should get
3 clarification. The Air District witnesses and Air District
4 documents are handled differently in different cases;
5 sometimes the CEC staff sponsors those documents, sometimes
6 the Applicant sponsors those documents, but I think in this
7 case, we obviously have active participation on the part of
8 the Air District, and so it just was not clear to me exactly
9 how we were going to handle that. Frankly, I will tell you
10 what my assumption had been, or what my preference would be,
11 that we have active participation from the Air District
12 witness, and therefore, that witness sponsor the "Air
13 District Documents," the PDOC, the FDOC, the Addendum to the
14 DOC, and the Supplement to the Addendum, or the primary
15 documents, there may be others, but those are the ones that
16 come to mind. But I just thought that was something worth
17 getting clarified here.

18 HEARING OFFICER CELLI: That is a good point. It
19 seems to me, in light of AB 1318, that it is probably
20 staff's obligation to bring in the South Coast documents
21 because that is part of the legal analysis.

22 MR. RATLIFF: Well, typically, as you know, the
23 staff will sponsor testimony in the form of the FDOC from
24 the Air District. That is the normal way of going forward
25 and we can do that here, and likewise sponsor the Air

1 District Witness. But we have also had occasion in the
2 past, in at least one case that I am aware of, where the
3 District actually wanted to present its own witnesses, and I
4 know Mr. Wiese is present, so he might indicate whether they
5 have a preference for presenting their own witness rather
6 than having staff do it.

7 HEARING OFFICER CELLI: Well, let's hear from - Mr.
8 Weise, are you on the line?

9 MR. WIESE: Uh -

10 HEARING OFFICER CELLI: Oh, hello.

11 MR. WIESE: Commissioner, I am here. Kurt Wiese,
12 General Counsel.

13 HEARING OFFICER CELLI: Good to see you.

14 MR. WIESE: Good to see you, as well. Thank you
15 from the South Coast Air Quality Management District. The
16 District really is at the pleasure of the Commission and the
17 staff. We are happy to sponsor the testimony, but it is
18 your call.

19 HEARING OFFICER CELLI: What do you want to do, Mr.
20 Ratliff?

21 MR. RATLIFF: Well, if Mr. Wiese trusts us to
22 present his witnesses, we will be glad to do so.

23 HEARING OFFICER CELLI: Well, I think that seems
24 appropriate, so we will go that way.

25 VICE CHAIR BOYD: Should there be a question, Mr.

1 Ratliff?

2 HEARING OFFICER CELLI: And how many witnesses - is
3 there just going to be one witness from South Coast?

4 MR. WIESE: Yes, that is correct, and that is Mr.
5 Nazemi.

6 HEARING OFFICER CELLI: Okay, that is great. And
7 what I suspect then, is that would probably take up the last
8 half hour of my estimated two and a half to three hours of
9 hearing, if we can fit it in that. So I appreciate that.
10 Is there anything further from Applicant?

11 MR. CARROLL: No, nothing further. Thank you.

12 HEARING OFFICER CELLI: From staff?

13 MR. RATLIFF: No.

14 HEARING OFFICER CELLI: From CBE?

15 MS. LAZEROW: Nothing further, thank you.

16 HEARING OFFICER CELLI: From CCAT?

17 MS. JOHNSON MEZAROS: Nothing further, thank you.

18 HEARING OFFICER CELLI: Thank you all very much. I
19 am looking forward to a very efficient Evidentiary Hearing.

20 VICE CHAIR BOYD: May I say something on the record?

21 HEARING OFFICER CELLI: Oh, I am sorry,
22 Commissioner.

23 VICE CHAIR BOYD: Well, I noted after I finished
24 calling for introductions that I skipped over our Public
25 Advisor, Jennifer Jennings, who has been here, for the

1 record, for the entire hearing. I just wanted that noted.
2 Sorry, Jennifer. For some reason I did not see you over the
3 podium, but there is no reason not to have. So, in any
4 event, just for the record.

5 HEARING OFFICER CELLI: Well, thank you. And
6 appropriately so because we are now taking public comment.
7 Ms. Jennings, do we have any public present who wish to
8 comment here today in the hearing remaining at the Energy
9 Commission?

10 MS. JENNINGS: No, not that I am aware of. No.

11 HEARING OFFICER CELLI: Okay, then let's go to the
12 telephones. I have several people who have called in who
13 are identified. I have Joe Griffiths. Did you wish to make
14 a statement?

15 MR. GRIFFITHS: No comment at this time, thank you.

16 HEARING OFFICER CELLI: Ms. Mavis Scanlon, did you
17 wish to make a public comment?

18 MS. SCANLON: No, I did not. Thanks.

19 HEARING OFFICER CELLI: And Mohsen Nazemi, did you
20 wish to make a public comment?

21 MR. NAZEMI: No, not at this time, thank you. Sorry
22 for not being there in person.

23 HEARING OFFICER CELLI: No problem. Roy Belden
24 seems to have hung up. Are you on the line, Mr. Belden?

25 MR. BELDEN: Yes, I am, and I have no comment.

1 HEARING OFFICER CELLI: Thank you. And then I have
2 Greg - no last name?

3 MR. HYATT: Yeah, no comment.

4 HEARING OFFICER CELLI: And then I have two more
5 call-ins, is there any member of the public who is on the
6 telephone who wishes to make a comment to the Committee at
7 this time? Okay, hearing none, then we will hand the Pre-
8 Hearing Conference back to Commissioner Boyd for
9 adjournment.

10 VICE CHAIR BOYD: I think you just set a record, I
11 am not quite sure, but it has come close to it. So my
12 thanks to everybody for being here, and my apologies for
13 everybody having to be here, but this was part of the
14 procedure that we must go through. So I thank you all and
15 look forward to our hearing on the 19th, and I hope the
16 optimistic views of the many about the length is indeed
17 true, but I and we will be prepared to hear any and all of
18 the testimony, and prepare to spend whatever time it takes
19 to finish the process. So with that note, thank you and I
20 guess this hearing is adjourned.

21 MR. CARROLL: Thank you.

22 [Adjourned at 10:53 A.M.]

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